



OFFICE OF PUBLIC INSTRUCTION

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Linda McCulloch
Superintendent

February 2, 2005

****, Superintendent
**** K-12 Schools

THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION

RE: **FINAL REPORT** – In the Matter of ***, 2004-03, Alleged Violations of the Individuals With Disabilities Education Act (IDEA).

Dear Mr. **** and Superintendent ***:

This is the Final Report pertaining to the above-referenced special education compliance complaint (the "Complaint") compiled and submitted pursuant to Admin. R. Mont. 10.16.3662. Mr. **** (the "Complainant") alleges that the ***** Public Schools (the "District") violated the Complainant's child's (the "Student's"), "Individualized Education Program ("IEP") regarding MAP achievement testing accommodations / modifications." In particular the complaint alleges that the District violated the Student's IEP by "failing to provide the Student a quiet, distraction free small group setting in which to take the MAP achievement testing on October 14, 2004".

A. Procedural History

1. The Complaint. On November 9, 2004, the Montana Office of Public Instruction ("OPI") received a Complaint signed by Complainant and dated November 3, 2004. I notified the District of the filing of the Complaint by letter dated November 10, 2004.
2. Early Assistance Program. The OPI's Early Assistance Program attempted to resolve the controversy pursuant to Admin. R. Mont. 10.16.3660. The director of the Early Assistance Program, Tim Harris, concluded resolution was not possible.
3. District's Written Response. On November 15, 2004, I notified the parties that the Early Assistance Program was unable to resolve the dispute and I called for the District's Written Response, which was due on November 26, 2004. I received the District's Written Response by FAX on November 30, 2004.

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4. Complainant's Additional Information. On December 6, 2004 I received additional written information from the Complainant in response to the District's Written Response and pursuant to Admin. R. Mont. 10.16.3662 (7).
5. Extension of Time To Complete Investigation and File Final Report. My letter dated December 15, 2004 extended the due date of this final report to January 31, 2005.
6. Extension of Time to Complete Investigation and File Final Report. My letter dated January 28, 2005 extended the due date of this final report to February 15, 2005.

The findings and conclusions contained in the Final Report are based on the Complaint, the District's Written Response, supporting documents, and the Complainant's additional submissions. Both federal and state law require that I review all relevant information and make an independent determination as to whether the District violated IDEA, 34 CFR 300.661 (a) (3) and Admin. R. Mont.10.16.3662 (8). As part of my investigation hereunder, I engaged the services of Gary Garlock to review certain materials and interview the parties.

B. Legal Framework

Federal and state law requires that students with disabilities receive FAPE. 20 U. S.C. 1400-1487, Mont. Code Ann. 20-7-401, ET seq. In general, FAPE means special education and related services that conform to the student's individualized education program. Special education, in turn, means specifically designed instruction, at no cost to the parent to meet the unique needs of the disabled child. The United States Supreme Court has interpreted IDEA to mean that "the basic floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Hendrick Hudson Dist. Bd. Of Ed. V. Rowley*, 458 U. S. 176, 202 (1982). The Supreme Court has not read IDEA to mean that a disabled child be provided with the best available special education or services or that the services maximize each child's potential. Therefore, under IDEA, the District must provide the "basic floor of opportunity" for the Student's education. Particular regulations promulgated to implement IDEA are referenced below.

C. Findings and Conclusions

1. The Student is a 14 – year-old female attending the ***** Middle School. She was identified as a student with a learning disability in written language through the Child Study Team (CST) process during her early elementary school years. The Student received special education through pullout resource room services through the seventh grade. Starting with 2004-05 school year the Student is receiving all of her education in the general education setting with 5 hours per week special education support from a para-educator in the Language Arts area.
2. According to the IEP dated 5/27/04 which is in effect until 5/27/05 under the "Identified Needs" section of page 1 of the IEP, the staff states: "the Student continues to need a quiet place to concentrate for test taking and independent writing." On page 2 of the IEP under the "Participation in State/District wide Assessments" section of the IEP it indicates "the Student will participate in the State/District wide assessment with standard and non-standard accommodations as

specified below or on the ITBS/ITED Testing Accommodations form.” The specifications written under this heading are as follows: “M.A.P. Allow extra time for all testing. Administer all tests in a quiet distraction-free location. ITBS and MP tests: Portions of tests read to her as allowed. Allow use of calculator. Check to be sure that the Student is on the correct page/section of the test and answer sheets.”

D. Allegations and Disposition

The Complaint contains essentially one substantive allegation, which is addressed below.

1. Allegation: The District violated the Student’s IEP regarding M.A.P. achievement testing accommodations/modifications by failing to provide the Student a quiet, distraction-free small group test setting.

Denied.

34 CFR 300.342 (b), (2), (3), (i), (ii)

(b) Implementation of IEP’s. Each public agency shall ensure that (2) The child’s IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and (3) Each teacher and provider described in paragraph (b) (2) of this section is informed of – (i) His or her specific responsibilities related to implementing the child’s IEP; and (ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

The Student’s special education teacher is responsible for informing all of the Student’s regular education teachers and para-educators of the accommodations and modifications contained in the Student’s IEP. This is done in a meeting at the beginning of the school year. Each teacher and para-educator receives a written copy of the Student’s accommodations and modifications. All staff involved in the M.A.P. testing on October 14, 2004 were aware of the Student’s testing accommodations and modifications.

34 CFR 300.347 (a), (5)(i)

(a) General. The IEP for each child with a disability must include – (5)(i) A statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment.

The Student’s IEP as stated in Section C of this report does contain a statement of the specific accommodations to be provided to the Student.

34 CFR 300.350(a)

(a) Provision of services. Subject to paragraph (b) of this section, each public agency must – (1) Provide special education and related services to a child with a disability in accordance with the child’s IEP; and (2) make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.

The District complied with the testing accommodations stated in the IEP based on the following: The supervising teacher for the M.A.P. testing was aware of the stated accommodations for the Student's participation in the achievement test and took the Student to the Title I laboratory to take the reading portion of the M.A.P. test instead of staying with the rest of the English class in the Library.

The Title I laboratory met the requirement of a "quiet distraction-free location" as well as having an adult assigned to assist in the reading of the test if needed. At the time of the testing the only persons in the Title I laboratory were the Student and the para-educator assigned to the Title I program, therefore there were no other students present to cause distractions. The Student reports that there was voice and chair shuffling noises coming from an adjoining classroom during the testing. The para-educator, when questioned by the investigator, reports that she did not notice any significant noise and that the Student did not communicate to her that she was being distracted due to noise. When asked by the investigator if she (the Student) said anything to the para-educator concerning the noise, the Student stated that she "didn't say anything."

The Complainant stated to the investigator that the District offered to have the Student re-take the reading portion of the M.A.P. test in another location after the Complainant voiced his concerns about the location of the testing on October 14, 2004. This offer to retake the test was declined because the Student did not want to miss any of her other classes.

E. Order

Based on the information gathered during the investigation I have determined that the District made a good faith effort to implement the IEP provision which stated that the District would "administer all tests in a quiet distraction-free location". Therefore I find that the District is not in violation of implementing the IEP as written and the Complaint is hereby dismissed.

Sincerely,

Cathy Warhank, Compliance Officer
Chief Legal Counsel